

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p>Complainant,</p> <p>v.</p> <p>AT&T COMMUNICATIONS OF THE MIDWEST, INC.,</p> <p>Respondent.</p>	<p>DOCKET NO. FCU-02-16 (C-02-164)</p>
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(Issued August 19, 2002)

On July 17, 2002, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a request for formal complaint proceedings pursuant to 199 IAC 6.5, asking that the Board review the proposed resolution issued in C-02-164, involving AT&T Communications of the Midwest, Inc. (AT&T), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a" (2002). Based upon the record assembled in the informal complaint proceedings (which are a part of the record in this formal complaint proceeding pursuant to 199 IAC 6.7), it appears the events to date can be summarized as follows:

On April 19, 2002, Board staff received a written complaint from Mr. Bill Miller stating that his long distance service had been changed from MCI to AT&T without his consent; that is, alleging his long distance service had been slammed. The matter was identified as C-02-164.

On April 25, 2002, Board staff forwarded the letter to AT&T for response within ten days.

On May 13, 2002, AT&T responded, stating that it did not slam the customer and providing a recording of a third-party verification authorizing the change in service. AT&T further stated that a telemarketer called the Miller residence on November 29, 2001; an order was processed; the transaction was verified; and AT&T service was connected on December 2, 2001. AT&T service was then terminated on February 6, 2002.

The recording provided by AT&T indicated that the contact party at the Miller residence was Ms. Janice Bennett, fiancée of Mr. Miller.

On July 13, 2002, Board staff issued a proposed resolution noting that the verification recording reveals that Ms. Bennett was under the impression that Mr. Miller's account was already with AT&T; that is, that she was authorizing continuation of service, rather than a change of long distance service. Board staff concluded that the customer had not consented to the change and AT&T had slammed the account. The proposed resolution directed AT&T to credit the customer's account for the full amount in dispute and informed the parties that they had 14 days to appeal the proposed resolution or it would become the final resolution.

On July 17, 2002, Consumer Advocate filed its request for formal complaint proceedings, asking the Board to consider the propriety of imposing a civil penalty pursuant to Iowa Code § 476.103(4)"a" and to consider the factors identified in § 476.103(4)"b" as a possible basis for compromising a civil penalty, if one is imposed. Consumer Advocate states that the verification is invalid and notes that the verifier asks if the customer is "authorized by the billing party to make carrier changes *or charge service to the account*" (emphasis added). Consumer Advocate argues there is a material difference between authorization to make changes in the account and authorization to charge service to the account, so the form of the verifier's question, if commonly used by AT&T's third-party verifiers, raises substantive issues regarding the validity of just about any third-party verification offered by AT&T.

Based on these additional facts, Consumer Advocate argues that AT&T's response to date is inadequate and there is reasonable ground for formally investigating the complaint. Consumer Advocate asks that the Board docket the matter as a formal proceeding, giving the parties such additional notice and opportunity for hearing as may be appropriate and consider the need for remedial action and the appropriateness of a civil penalty, in addition to such other actions as may be necessary to bring the matter to a proper resolution.

As of the date of this order, AT&T has not filed any response to Consumer Advocate's request for formal proceeding.

Based on the circumstances described above and Consumer Advocate's request, the Board will docket this matter as a formal complaint proceeding, pursuant to Iowa Code §§ 476.3 and 476.103, identified as Docket No. FCU-02-16, and assign it to an administrative law judge for further proceedings.

IT IS THEREFORE ORDERED:

1. The "Request For Formal Proceeding" filed on July 17, 2002, by the Consumer Advocate Division of the Department of Justice is granted, pursuant to Iowa Code §§ 476.3 and 476.102 (2001). The informal complaint proceedings identified as C-02-164 are docketed for formal proceedings identified as Docket No. FCU-02-16.

2. Pursuant to Iowa Code § 17A.11(1)"b" and 199 IAC 7.1(4), this matter is assigned to Administrative Law Judge Amy Christensen for such further proceedings as may be appropriate.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 19th day of August, 2002.